IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8797 of 1993

For Approval and Signature:
HONOURABLE Ms. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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INDIAN HUME PIPE CO.LTD & ANR & 1 - Petitioner(s)

Versus

UNION OF INDIA & ORS & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioners
MS AMEE YAJNIK for Respondent(s) : 1,
MS KIRAN PANDEY AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
6th August, 2007

ORAL JUDGMENT

The petitioners before this Court are - the Indian Hume Pipe Company Limited, a company registered under the Companies Act, 1956, and its

Factory Manager. The petitioners are the manufacturers of Air Rifles, Air Guns & Air Pistols. According to the petitioners, their products are used for sports purposes alone. The petitioners, therefore, are not required to obtain license to manufacture or for sale of its products as envisaged by Section 5 of the Arms Act, 1959 [hereinafter referred to as, "***the Act***"]. In the alternative, it is prayed that the license *hitherto* issued to the Company through its Director-late Shri K.G Prabhu be renewed in the name of the Company as the said Shri K.G Prabhu passed away on 29th April, 1991.

Pending this petition, the arms of the above referred description were submitted before the Forensic Science Laboratory, Gandhinagar for its testing. The Directorate of Forensic Science has, under its Report dated 26th June, 2007, opined that the eight models of air riffles, air guns, air pistols submitted for test fall within the exempt categories as mentioned in Serial No.3 of Schedule-II of the Government Notification dated 13th July, 1962, issued by the Central Government in exercise of power conferred by Section 41 of the Arms Act. Pursuant to

the said report, Additional Commissioner of Police [*Traffic*], Ahmedabad City has made order dated 19th July, 2007 declaring that the aforesaid category of arms manufactured by the petitioners fall within the exempt categories mentioned in the above referred Item No.3 to Schedule-II of the Government Notification dated 13th July, 1962. It is further stated that for the manufacture of the said arms, the petitioner does not require license. The said order also imposes certain conditions mentioned therein.

Mr. Joshi has relied upon the aforesaid Government Notification dated 13th July, 1962; particularly item No.3 of Schedule-2. The said Item No.3, so far as it is relevant, reads as under :-

Arms & Ammunition	Provisions of the Act
[3] Air-guns, air rifles and air pistols which satisfy the following test, namely, that the projectiles discharged from such guns or pistols do not perforate or target 12 inches square formed by deal wood boards of even grain, free from knots, planed on both sides and of thickness of ½ inch and 1 inch for air pistols and air guns/rifles, respectively : Provided that in making and estimating the test the following conditions shall be observed namely :- xx xx xx xx	All : provided that the Central Government may, by notification in the official Gazette, retain all or any of the provisions of the Act in respect of air-pistols or of any class thereof in the case of persons or of any specific area.

Mr. Joshi has submitted that as stated under Column No.2, the categories of arms mentioned under Column No.1 are made exempt from all provisions of the Act, except as provided under the *proviso* thereto. He has submitted that in exercise of the power conferred by the said *proviso*, the Central Government has not issued any notification. The arms manufactured by the petitioners are, therefore, exempt from all provisions of the Act. Nevertheless, the Commissioner of Police has granted a limited exemption from obtaining license for production under Section 5 of the Act. He has submitted that now that the arms manufactured by the petitioners are held to fall in the category of exempt arms, the petitioners are

entitled to exemption from all the provisions of the Act as envisaged by the aforesaid Notification dated 13th July, 1962.

Ms. Pandey has contested this petition. She has submitted that what the petitioners prayed for was exemption from having license as envisaged by Section 5 of the Act and in the alternative, for renewal of the license. The petitioners did not pray for exemption in toto, as is now argued. Such a relief, therefore, cannot be granted to the petitioners.

Section 5 of the Act makes the license mandatory, *inter alia*, for use, manufacture, sale, transfer, convert, repair, test or prove, etc. Section 41 of the Act empowers the Central Government to exempt/exclude any person or class of persons either jointly or in relation to such description of arms and ammunitions or withdraw any part from operation of any provision of the Act, as may be specified in the Notification.

It is undisputed that in exercise of the aforesaid powers vested under Section 41 of the Act, the Central Government has issued the above referred

Notification dated 13th July, 1962. Certain categories of arms specified in Column No.1 of Schedule-II to the said Notification are excluded from the operation of the Act to the extent mentioned under Column No.2. As recorded hereinabove, as far as category of arms that are manufactured by the petitioners are concerned, such categories of arms are exempted from all provisions of the Act. Though the Additional Commissioner of Police has agreed that the arms produced by the petitioners fall within the category of above referred Item No. 3, he has stopped short to declare that the petitioners are not required to possess a license for manufacture.

Be that as it may, in view of the report of the Ballistic Expert, which has been accepted by the Commissioner of Police without objection, and in absence of any notification issued by the Central Government in respect of item no.3 of Schedule-II to the Government Notification dated 13th July, 1962, it is declared that the petitioners are exempted from all the provisions of the Act as envisaged by the aforesaid Item No. 3 of Schedule-II to the Government Notification dated 13th July, 1962; subject to the

conditions imposed by the Additional Commissioner of Police in his Order dated 19th July, 2007.

The petition is allowed in the above terms. Rule is made absolute. The parties will bear their own cost. Civil Application stands disposed of.

Mr. Joshi has submitted that pursuant to the *interim* order dated 6th November, 2006 made by this Court [*Coram* : ***R.S Garg, J.***], a prosecution has been lodged against the petitioners. He has submitted that in view of the present order the said prosecution be set-aside. In case any prosecution has been lodged against the petitioners as submitted, the petitioners may apply to the concerned Court for discharge.

{Ms. R.M Doshit, J.}

*Prakash**